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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223262
Party	Plaintiff Content Guru Limited
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Submission	Motion to Quash
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Signature	/Elissa Brockbank Reese/
Date	02/17/2016
Attachments	Content Guru - Motion to Quash Notices of Deposition.pdf(82293 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 86328428
to register: TWEETSTORM
Filed: July 3, 2014
Published: April 14, 2015

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CONTENT GURU LIMITED,	:	
	:	Opposition No. 91223262
Opposer,	:	
	:	
v.	:	
	:	
TWITTER, INC.,	:	
	:	
Applicant.	:	
-----X	:	

OPPOSER’S MOTION TO QUASH NOTICES OF ORAL DEPOSITION

Pursuant to § 521 of the Trademark Trial and Appeal Board Manual of Procedure, Opposer Content Guru Limited (“Content Guru”), by and through counsel, hereby moves the Trademark Trial and Appeal Board to quash two Notices of Deposition served on Content Guru by Applicant. For the reasons set forth below and found in Content Guru’s Opposition to Applicant Twitter, Inc.’s Motion to Take Depositions of Foreign Deponents by Oral Examination, which response is hereby incorporated by reference, Applicant’s two Notices of Deposition improperly seek to depose individuals in a foreign country by oral examination in violation of 37 C.F.R. § 2.120(c).

FACTUAL BACKGROUND

On August 12, 2015 Content Guru filed a Notice of Opposition seeking refusal of registration of Application Serial No. 86328428 for the mark TWEETSTORM. On February, 3, 2016, prior to the exchange of any documents, Applicant served by First Class Mail two Notices of Deposition. *See* Exhibits A & B. The first Notice of Deposition seeks to take the oral

deposition of Mr. Martin Taylor, the Sales and Marketing Director of Content Guru, who resides in the United Kingdom. The second Notice of Deposition seeks to take the oral deposition of Content Guru pursuant to Federal Rule of Civil Procedure 30(b)(6) where each of Opposer's officers, directors, and/or those with sufficient knowledge to respond to the topics included in the Notice of Deposition reside outside the United States. Applicant filed contemporaneously with the service of the two Notices of Deposition a Motion to Take Depositions of Foreign Deponents by Oral Examination. On February 17, 2016, Content Guru filed a timely Opposition to Twitter's Motion.

ARGUMENT

Content Guru Limited is a UK company, with its principle place of business located in Berkshire, England. None of its officers, directors, or other persons with sufficient knowledge regarding the topics attached to the 30(b)(6) Notice of Deposition reside in the United States.

The Trademark Trial and Appeal Board Manual of Procedure specifically addresses the procedure for taking depositions of foreign parties. Section 404.03(b) states that "if the discovery deposition of [a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) of the Federal Rules of Civil Procedure] is taken in a foreign country, it must be taken on written questions, in the manner described in 37 C.F.R. § 2.124, unless the Board, on motion for good cause, orders, or the parties stipulate, that the deposition be taken by oral examination." TBMP § 404.03(b) (citing 37 C.F.R. § 2.120(c)(1)). The Board has reiterated that "[t]he discovery deposition of a party residing in a foreign country is taken in the country in which the party resides, unless that party consents to be present in the United States." *7D Food Int'l, Inc. v. Western Sales Trading Co.*, No. 91193605, 2011 WL

13054684, at *1 (T.T.A.B. Nov. 10, 2011). Moreover, “the Board will not order a natural person residing in a foreign country to come to the United States for the taking of his or her discovery deposition.” *Id.* (citing TBMP § 404.03(b)).

Here, Applicant’s Notices of Deposition seek to take live depositions of individuals residing outside the United States without good cause and without a stipulation of the parties. As the TBMP makes clear, the deposition of foreign resident witnesses should be taken by way of written questions unless the Board finds good cause or the parties agree to the taking of an oral deposition. *D.K. Jain v. Ramparts, Inc.*, 49 U.S.P.Q.2d 1429, 1998 WL 962200, at *2 (T.T.A.B. 1998). Therefore, Applicant’s Notices of Deposition are improper.

For these reasons, as well as those included in Opposer’s Opposition to Applicant’s Motion to Take Depositions of Foreign Deponents by Oral Examination, which is hereby incorporated by reference, Content Guru respectfully requests that the Board order that the two Notices of Deposition served by Applicant on February 3, 2016, be quashed.

Dated: February 17, 2016

Respectfully Submitted,

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v.	:	
	:	
TWITTER, INC.,	:	
	:	
Applicant.	:	
-----X	:	

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing OPPOSER'S MOTION TO QUASH NOTICES OF ORAL DEPOSITION has been served on Applicant by depositing said copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

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Dated: February 17, 2016



Elissa Brockbank Reese